IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 725 OF 2004

MRS. ZARINA SHAIKH ABDUL RASHID ..

PETITIONER Vs.

AZIZ HYDER ALI TALWARIA & ORS. .. RESPONDENTS

Mr. A. M. Joshi for petitioner

CORAM:-SMT. RANJANA DESAI, J.

DATED:-28-3-2005

P.C.

This writ petition is directed against the order dated 31/1/01 passed by the Second Addl. District Judge, Pune in Miscellaneous Application No. 176 of 2000. This application was filed for condonation of delay of about 9 years and 10 months in preferring the restoration petition of appeal which was dismissed in default on 3/5/90.

2. In the application it is stated that the petitioner is a Pardanashin lady and at the relevant time respondent 2 and 3 were minors. They relied on their

advocate Shri A. R. Rehman. Advocate Shri Rehman informed the petitioner that appeal was not listed for hearing. However, after the petitioner made inquiries in the court she came to know that the appeal was dismissed for default. According to the petitioner she was under bonafide impression that the appeal was pending and would come up for hearing. In good faith she relied upon her advocate. According to the petitioner she has a good case on merits and sufficient cause for not preferring restoration petition in time. This application came to be dismissed and hence this writ petition.

3. I have heard Mr. Joshi, learned counsel for the petitioner. He contended that the petitioner is a pardanashin lady and at the relevant time her two sons were minors. They relied upon their advocate Shri Rehman who let them down. He submited that for the inaction and negligence of the lawyer the petitioner may not be made to suffer and hence delay may be condoned.

4. I am unable to agree with the learned counsel.

5. Barring a statement that the petitioner is a pardanashin lady and her sons were minors at the relevant time, there is no other explanation given as to why the application was not preferred for 9 years and 10 months. It is not as if the present civil appeal is the only litigation between the parties. The learned Judge has in the impugned order referred to other pending

proceedings between the parties. It appears that the litigations are pending since the year 1977. In fact the petitioner had appeared in the complaint which was filed against her by the respondents. In the judgment in the said complaint there is a reference to Suit No. 1207 of 1987 against which the instant civil appeal No. 1271 was filed by the petitioner. Therefore, it is not as if the petitioner was unaware of this appeal. The lower appellate court is right in observing that the petitioner could have enquired about the appeal atleast from 1977 till 1990. The case of the petitioner that she was totally unaware as to what happened to the instant appeal cannot be accepted.

5. In my opinion, this is not a case where only the lawyer could be blamed for negligence and it is the utter negligence of the petitioner which has led to the dismissal of the appeal. No sufficient cause is made out for restoration. Petition is dismissed.

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